

## REMARKS/ARGUMENTS

### 1. Amended Claims 20-27 Comply with 35 U.S.C. §101

The Examiner rejected claims 20-27 as directed to non-statutory subject matter (35 U.S.C. §101) on the grounds that the term “article of manufacture” may cover transmission signals. (Office Action, pg. 2)

To overcome this rejection, Applicants amended claim 20 to recite that the “article of manufacture” “comprises a computer readable storage medium having code executed to communicate” and perform operations. This added requirement is disclosed in at least para. 16 of the Specification.

Applicants request the Examiner to withdraw the Section 101 rejection in view of this amendment.

### 2. Claims 1-3, 5, 7-11, 13, 15-22, 24, 26, and 27 are Patentable Over the Cited Art

The Examiner rejected claims 1-3, 5, 7-11, 13, 15-22, 24, 26, and 27 as obvious (35 U.S.C. §103) over Latif (U.S. Patent No. 6,393,483) and Fung (U.S. Pub. No. 2002/0004912). Applicants traverse with respect to the amended claims.

Amended independent claims 1, 9, 18, and 20 require: managing transmission of data through a plurality of adaptors connected to switches; sending through the adaptors at least one query to the switches connected to the adaptor to determine a status of external ports in each queried switch communicating with a network; and in response to determining from the at least one query that no external ports are operational in one non-operational switch, indicating not to transmit data to the adaptor connected to the non-operational switch, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting.

Applicants amended these claims to recite that the adaptor for which indication is made not to transmit data is functioning and capable of transmitting. This added requirement is disclosed on at least para. 15 of the Specification.

The Examiner cited col. 14, lines 60-65 of Latif as teaching the pre-amended limitation of indicating not to transmit (Office Action, pgs. 4, 10-11, 16, 18), which now recites in response to determining from the at least one query that no external ports are operational in one non-operational switch, indicating not to transmit data to the adaptor connected to the non-operational

switch, wherein the adaptor for which indication is made not to transmit data is functioning and capable of transmitting. Applicants traverse with respect to the amended claim.

The cited col. 14 mentions that when a port (P1) fails, the driver will look to the next active port and assign receiving functions to that port P2. This cited col. 14 does not teach or suggest the claim requirement of indicating not to transmit data to a functioning adaptor if the functioning adaptor is not connected to operational external ports. Instead, the cited col. 14 discusses how to handle a failed port by assigning functions away from the failed port to a functioning port. This does not teach the claim requirement of indicating to not transmit data to a functioning adaptor if the external ports to which the functioning adaptor connects are not operational.

Further, even if the cited Latif and Fung are combined as the Examiner proposes, this cited combination does not teach or suggest the claim requirement of in response to determining from the at least one query that no external ports are operational in one non-operational switch, indicating not to transmit data to a functional adaptor capable of transmitting that is connected to the non-operational switch. Instead, the proposed combination provides a technique for reassigning functions from a failed port to a functioning port (Latif) along with the ability to manage a switch (Fung).

Accordingly, Applicants submit that amended claims 1, 9, 18, and 20 are patentable over the cited art because the cited Latif and Fung do not teach or suggest all the claim requirements.

Claims 2, 3, 5, 7, 8, 10, 11, 13, 15-17, 19-22, 24, 26, and 27 are patentable over the cited art because they depend from one of claims 1, 9, 18, and 20, which are patentable over the cited art for the reasons discussed above. Moreover, the following dependent claims provide additional grounds of patentability over the cited art.

Claims 3, 11, and 22 depend from claims 1, 9, and 18, respectively, and further require indicating to transmit data to one adaptor connected to one switch having at least one operational external port in response to determining from the at least one query that at least one external port in the switch is operational when the switch was previously indicated as non-operational.

The Examiner cited col. 7, lines 30-45 of Latif as teaching the additional requirements of these claims. (Office Action, pg. 6, 12, 19) Applicants traverse.

The cited col. 7 mentions that a check timer routine determines the status of all ports on the NIC. If a port returns to active state from a failed state, then the NIC driver determines

whether to reassign tasks to the port P1. The NIC driver can detect failures in the ports and then perform load balancing to reassign the load to remaining active ports of the NIC.

The cited col. 7 discusses performing certain failure and recover operations with respect to ports on the NIC device being managed. This does not teach or suggest the claim requirements of indicating to transmit on a port on an adaptor when an external port to which that port on the adaptor connects becomes operational, where the switch including the external port determined to be operational was previously non-operational. The cited col. 7 does not teach how to activate a NIC or adaptor port based on the status of an external port to which the NIC connects. Instead, the cited col. 7 concerns how to detect and managed failed ports on the NIC itself, not manage adaptor ports based on the status of external ports on a switch as claimed.

Accordingly, claims 3, 11, and 22 provide additional grounds of patentability over the cited art because the additional requirements of these claims are not taught or suggested in the cited Latif and Fung.

Claims 7, 15, and 25 depend from claims 1, 9, and 26 and further require that the operations of managing the transmissions of data, sending the at least one query and indicating not to transmit data to one adaptor is performed by an intermediate device driver executing in a server in communication with adaptor device drivers.

The Examiner cited various sections of Latif as teaching these claim requirements, which discusses the operations as performed by a NIC driver. The claims require that the operations of querying the switch external ports and indicating not to transmit data to a functioning adaptor are performed by an intermediate device driver in communication with adaptor device drivers. The Examiner has not cited any part of Latif that teaches that an intermediate device driver in communication with multiple adaptor device drivers queries switch external ports and indicates to not transmit data to a functioning adaptor connected to a non-operational switch. Instead, the cited Latif discusses operations performed by the NIC or adaptor driver itself, not an intermediate device driver connected to multiple adaptor device drivers as claimed.

Accordingly, claims 7, 15, and 25 provide additional grounds of patentability over the cited art because the additional requirements of these claims are not taught or suggested in the cited Latif and Fung.

3. Claims 4, 6, 12, 14, 23, and 25 are Patentable Over the Cited Art

The Examiner rejected claims 4, 6, 12, 14, 23, and 35 as obvious (35 U.S.C. §103) over Latif and Fung and further in view of Masuyama (U.S. Patent Pub. No. 2005/0058063). (Office Action, pg. 21)

Applicants submit that these claims are patentable over the cited art because the base claims 1, 9, and 18 from which they depend are patentable over the cited art.

Conclusion

For all the above reasons, Applicant submits that the pending claims 1-27 are patentable. Should any additional fees be required beyond those paid, please charge Deposit Account No. 50-0585.

The attorney of record invites the Examiner to contact him at (310) 553-7977 if the Examiner believes such contact would advance the prosecution of the case.

Dated: March 18, 2008

By: /David Victor/

David W. Victor  
Registration No. 39,867

Please direct all correspondences to:

David W. Victor  
Konrad Raynes & Victor, LLP  
315 South Beverly Drive, Ste. 210  
Beverly Hills, CA 90212  
Tel: (310) 553-7977  
Fax: 310-556-7984